

Article Information

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Blockchain Bites: Singapore's stance: Court declares crypto as clearly property, US Congress' considering compelling crypto laws, Hong Kong grants first retail licences to crypto exchanges, PayPal launches USD stablecoin in push for crypto payments

Michael Bacina, Steven Pettigrove, Tim Masters, Jake Huang, Luke Higgins and Kelly Kim of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Singapore's stance: Court declares crypto as clearly property

Singapore's High Court has potentially departed from the [UK Law Commission's approach](#) to classifying crypto as a new kind of property, with a decision handed down recently.

In the case, ByBit Fintech Limited (**ByBit**) sued an employee of WeChain Fintech Pte Ltd, a Singaporean company that provided payroll services to ByBit alleging that the employee had abused her position to wrongfully transfer fiat currency and Tether (**USDT**) to her own bank accounts and wallets. She has denied the allegations but an important preliminary issue for the court to decide was whether she held the transferred money and crypto on trust for ByBit and the court needed to consider whether USDT was property capable of being held on trust.

[The high court of Singapore ruled yes](#), that crypto assets were property and would fall within the legal classification of being as a 'thing in action'. A 'thing in action' is legal term of art, technically known as [chose in action](#), which refers to a thing in respect of which an individual lacks present enjoyment but for which they have a legal right to sue for recovery. Historically all property has been considered as either a 'thing in possession' / a chose in possession, or a 'thing in action'. Crypto-assets do not meet the traditional requirements to be considered a thing in possession because they are just a record on a ledger.

In making this decision, the court had regard to:

The legal history of things in action as they developed in the common law in England

And

How the law approaches other social constructs such as money

The judgment also referred to the [Monetary Authority of Singapore's recent digital assets consultation paper](#) and highlighted that MAS's proposals suggest that digital assets could be identified and segregated at the exchange level, supporting the view that it should be 'legally possible to hold [crypto-assets] on trust'. Unusually, the court made no reference to the recent UK Law Commission Final Report on Digital Assets or the lengthy consultation and consideration given by the UK as to the common law evolving to recognise a third category of personal property, being a 'thing, specifically a crypto-thing'.

In finding that the (allegedly) wrongly transferred USDT is property capable of being held on trust, the court declared a constructive trust over the asset in favour of ByBit. The court also emphasised that while the USDT carried with it the 'right to redeem an equivalent in United States Dollars' from Tether the argument that it resembled a 'traditionally recognised things in action', which would seem to place Tether itself as closer to chose in action under the legal definitions, the court did not consider this was a necessary feature for the decision.

Overall, it is an optimistic outcome for crypto asset holders, as it sheds light on the possibility that they may enjoy:

in principle an incorporeal right of property recognisable by the common law as a thing in action

despite the [UK Law Commission's approach](#) suggesting that a third category of personal property should be confirmed by legislation to settle any doubt at common law and that crypto-assets are neither things in possession nor things in action. This adds to a [prior Singaporean decision](#) confirming an NFT is property and shows the evolving flexibility of the common law in dealing with novel technology.

The UK's position, however, is one which would bring greater clarity to the crypto-industry as a formal recognition of a new category of property highlights the important nuances of crypto-assets and the need to customise fit for purpose and innovation enhancing legislation, so as to avoid the risk that "same risk, same regulations" approaches which do not account for the critical nuanced differences of crypto-assets will create perverse outcomes in the courts and in the world economy as crypto-assets become more prevalent.

Crypto Clarity Coming? Congress' considering compelling crypto laws?

A number of bills concerning digital asset regulation have been advanced in the US recently, marking 'the most significant legislative moment' in the US for the digital assets industry. The crypto regulatory bill progressing past the House Committees is a victory for the market participants who have sought regulatory clarity for some time. During the markup, [Representative Patrick McHenry of the House Financial Services Committee announced:](#)

As other jurisdictions like the UK, the [European Union], Singapore... have moved forward with clear regulatory frameworks for digital assets, the United States is at risk of falling behind. We intend to change that today.

[Stablecoin Act](#)

Clarity for Payment Stablecoins Act was passed in the US House of Representatives on 27 July 2023, with an [aim to establish a clear regulatory framework for asset backed stablecoins](#), to promote financial innovation without sacrificing investor protection and confidence. Notable provisions of the bill include:

- Mandatory disclosure requirements for assets held as reserves
- Establishing audit standards and promoting compliance
- Mandated controls concerning liquidity, capital requirements and risk management

The bill emphasised the view that:

Establishing a culture of compliance is a benefit to the long-term health of stablecoin issuers and will be a key mandate made by regulators when considering new applications under specific regulatory regimes.

While the bill awaits a difficult passage through the Senate, the proposed framework reflects a step in the right direction.

[Financial Innovation and Technology for the 21st Century Act](#)

Following its introduction on 20 July 2023, the bill was approved by the House Financial Services Committee (**FSC**) in a 35 to 15 vote and passed the House Agriculture Committee on 27 July. Importantly, this bill seeks to steer the US away from arbitrary regulation by enforcement by providing a 'system of regulation of digital assets' for the regulators. It contains provisions including a proposed joint committee between the Securities and Exchange Commission (**SEC**) and Commodity Futures Trading Commission (**CFTC**), as well as registration requirements for each regulator.

[Blockchain Regulatory Certainty Act](#) (BRCA)

This bipartisan bill sponsored by Republican Representative Tom Emmer and Democratic Representative Darren Soto also passed a vote in the FSC. The 2023 BRCA marks the fourth introduction of the bill since 2018, with all previous proposals failing to be implemented. In respect of the crypto framework, Tom Emmer warned:

If Congress does nothing, the United States will miss a huge opportunity and Americans will suffer for it.

A clear regulatory framework for digital assets is not only necessary for consumer protection but also required to ensure the regulators have clear guidelines by which it exercises power. If implemented, the bills are expected to facilitate financial innovation while ensuring consumer confidence and security.

In Australia, there have been some attempts to regulate digital assets, with the Treasury conducting consultations on [token mapping](#) and crypto asset secondary service providers and [recommendations](#) published by the Senate Select Committee on Australia as a Technology and Financial Centre on digital asset regulation.

In particular, [Digital Assets \(Market Regulation\) Act](#) introduced by Senator Bragg proposes to establish a licensing regime and set reporting requirements for exchanges. While it was brought forward in an ambition to save Australia from 'losing the race to regulate digital assets', the success rate of private members' bills is low, making the bill unlikely to be adopted by the government in its current shape, but it remains an important step in shaping the understanding and policy treatment of digital assets.

With the US aggressively marching towards crypto legislation and other jurisdictions like [Singapore](#), [Hong Kong](#) and [UK](#) all striving to create crypto-friendly frameworks to become the next crypto hub, Australia will have to move swiftly if we want to have a chance of catching up and bring innovation back onshore.

Hong Kong grants first retail licences to crypto exchanges

On 3 August 2023, local cryptocurrency firms [HashKey Exchange](#) and [OSL Digital Securities Ltd](#) received Hong Kong's first crypto exchange licenses to serve retail clients.

Hashkey and OSL were already the [only two local exchanges](#) licensed by the Securities Futures Commission (SFC) to provide virtual asset trading services to professional investors, under Hong Kong's previous opt-in licensing regime. On 3 August, they both announced that their existing licences had been upgraded to allow them to offer their services to retail investors.

[HashKey](#) said in its announcement:

As an existing Type 1 and Type 7 licenses holder, HashKey Exchange successfully underwent a simplified process to obtain the license upgrade ... to expand its business scope from serving professional investors to retail users, fulfilling market demand for a licensed platform that offers users a safer and simpler process for buying and storing cryptocurrencies.

Earlier this year, HashKey announced its [plan to introduce a regulated exchange](#) in the second quarter to serve retail customers and said it planned to [raise funds at a \\$1 billion valuation](#) to capitalise on Hong Kong's re-emergence as a [potential crypto hub](#). The company is hoping to sign up one million retail users by the end of this year. It is currently partnering with top-tier banks in Hong Kong, while planning to launch a liquid crypto fund in September.

OSL also put out a press statement saying that:

Effective immediately, OSL Digital Securities offers retail investors the ability to register on its platform and access digital asset products, starting with the popular cryptocurrencies bitcoin (BTC) and ethereum (ETH)

Gary Tiu, the head of regulatory affairs of OSL said:

This is a monumental moment not only for OSL but for the broader crypto market.

He added that the move showed virtual asset markets can be "regulated and safe".

It is important to note that the upgraded licenses of HashKey and OSL are not directly part of Hong Kong's latest [virtual asset service provider \(VASP\) licensing regime](#) launched on 1 June, which allows exchanges approved by the SFC to service retail customers. Currently, no exchanges have received a license under the new regime, though they are permitted a grace period of one year to comply with the new SFC guidelines or exit the market.

OKX and Huobi, founded in mainland China, are two of the major players publicly announcing they are applying for a VASP licence. The exchanges have also already started to sign up retail customers in the city, while working on complying with the [new guidance rules](#) in order to receive their licences.

South China Morning Post [reported](#) that certain exchanges had already been fast-tracked by the SFC and had received "in principle" approval under the new regime, though official announcements were expected to take several months.

While aimed at attracting more crypto business and [regaining its status as Asia's crypto hub](#), Hong Kong's new VASP regime is also targeted at mitigating risk following a tumultuous 2022 that saw a number of high-profile exchanges collapse, such as the [FTX exchange](#). The VASP regime requires exchanges to comply with a broad range of requirements and standards, including user onboarding, asset custody, cybersecurity and corporate governance.

PayPal launches USD stablecoin, pushing for more payments in crypto

Global payment company PayPal is [finally](#) launching its [US dollar pegged stablecoin](#), becoming the first major US financial company to push deeper into crypto payments despite regulatory clampdown and the so-called "crypto-winter".

The PayPal USD (PYUSD) is designed to maintain a stable \$1 USD value. According to PayPal's [website](#), PayPal USD is:

a stablecoin that's fully backed by US dollar deposits, US treasuries, and similar cash equivalents. You can buy and sell 1 PYUSD for 1 USD on PayPal.

Users of PayPal USD can buy, sell, hold, and transfer PayPal USD in PayPal's app or on the website. A user can send PayPal USD to another user on PayPal without fees.

Since PayPal USD is Ethereum based, users can also send it to Ethereum wallet addresses that accept PYUSD in a few steps.

PayPal USD can be used to pay "millions of" online stores via PayPal (PayPal will first sell the stablecoin for fiat). PayPal USD can also be converted to other cryptocurrencies (and vice versa) for a fee – effectively meaning that PayPal will offer a kind of traditional crypto exchange function.

PayPal's website explains the concept of stablecoins:

Stablecoins are a type of cryptocurrency designed to have a steady value over time relative to a reference asset, for example, the U.S. dollar.

and the tremendous benefits they bring:

They can provide inclusive, broad access to the financial system, and can enable fast and efficient money movement. Stablecoins are programmable, offering developers a useful digital currency that can be built into public blockchains and can help link the traditional economy and Web3.

At this stage, PayPal USD will only be available to US users who have an eligible US PayPal Balance account. PayPal has not mentioned whether PYUSD will be available for purchase on any other centralised or decentralised crypto exchanges.

PayPal USD is issued by [Paxos](#) Trust Company, a licensed limited purpose trust company subject to regulation by the New York State Department of Financial Services (NYDFS). In June 2022, PayPal was issued a BitLicense by NYDFS after previously obtaining a conditional BitLicense.

Paxos [said](#) it will publish a public monthly Reserve Report for PayPal USD that outlines the instruments composing the reserves backing PayPal USD, starting in September 2023. Paxos said it will also publish a third-party attestation of the value of PayPal USD reserve assets. The attestation will be issued by an independent accounting firm and conducted in accordance with standards established by the American Institute of Certified Public Accountants.

The issuance of stablecoin shows further support by traditional financial services and that payment business such as PayPal are determined to push further into crypto. While stablecoins have been around for some time, the collapse of [Luna/Terra](#) emphasises the need of confidence in the reserves and “peg” any stablecoin purports to maintain. The entrance of key players such as PayPal will likely provide a trustworthy alternative to existing stablecoin and a powerful option for traditional finance to further integrate with Web3.